PRODUCT LIABILITY/Cloture on Compromise Substitute (2nd Attempt)

SUBJECT: **Product Liability Fairness Act . . . H.R. 956. Coverdell motion to close debate on the Coverdell/Dole substitute amendment No. 690 to the Gorton substitute amendment No. 596.**

ACTION: CLOTURE MOTION AGREED TO, 60-38

SYNOPSIS: As passed by the House, H.R. 956, the Product Liability Fairness Act, will establish uniform Federal and State civil litigation standards for product liability cases and other civil cases, including medical malpractice actions.

The Gorton substitute amendment, as amended, would amend product liability law in Federal and State actions by abolishing the doctrine of joint liability for noneconomic damages, creating a consistent standard for the award of punitive damages and limiting such damages, and requiring the disclosure of attorney fees (see vote No. 135). It would also reform medical malpractice liability laws (see vote Nos. 137-144), provide sanctions for frivolous suits (see vote No. 136), and cap punitive damage awards in civil cases affecting commerce (see vote No. 146).

The Coverdell/Dole substitute amendment would restore the language of the Gorton substitute as it was introduced with the following changes:

- punitive damage awards in product liability cases could not exceed 2 times the sum of economic and noneconomic losses (see vote Nos. 139, 145, and 146 for related debate);
- a punitive damage award in a civil action could not exceed the lesser of $250,000 or 2 times the sum of economic and noneconomic losses if assessed against: a business, organization, or government with fewer than 25 employees; or an individual with a net worth of less than $500,000;
- the alternative dispute resolution provisions would be stricken (see vote No. 149); and
- the workers compensation subrogation standards section would be modified to require written notification to an employer before an employee could settle or accept payment from a manufacturer or product seller (the Gorton substitute amendment would require written consent).

On May 5, 1995, Senator Coverdell sent to the desk, for himself and others, a motion to close debate on the Coverdell/Dole

(See other side)

YEAS (60)			NAYS (38)			NOT VOTING (2)	
Republicans (46 or 87%)		Democrats (14 or 31%)	Republicans (7 or 13%)	Democrats (31 or 69%)		Republicans (1)	Democrats (1)
Abraham	Hatfield	Dodd	Cohen	Akaka	Graham	Warner-[2]	Moynihan-[2]
Ashcroft	Helms	Dorgan	D'Amato	Baucus	Harkin		
Bennett	Hutchison	Exon	Packwood	Biden	Heflin		
Bond	Inhofe	Feinstein	Roth	Bingaman	Hollings		
Brown	Jeffords	Johnston	Shelby	Boxer	Inouye		
Burns	Kassebaum	Kohl	Simpson	Bradley	Kennedy		
Campbell	Kempthorne	Lieberman	Specter	Breaux	Kerrey		
Chafee	Kyl	Mikulski		Bryan	Kerry		
Coats	Lott	Moseley-Braun		Bumpers	Lautenberg		
Cochran	Lugar	Nunn		Byrd	Leahy		
Coverdell	Mack	Pell		Conrad	Levin		
Craig	McCain	Pryor		Daschle	Murray		
DeWine	McConnell	Robb		Feingold	Reid		
Dole	Murkowski	Rockefeller		Ford	Sarbanes		
Domenici	Nickles			Glenn	Simon		
Faircloth	Pressler				Wellstone		
Frist	Santorum						
Gorton	Smith						
Gramm	Snowe						
Grams	Stevens						
Grassley	Thomas						
Gregg	Thompson						
Hatch	Thurmond						

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

substitute amendment, as amended.

NOTE: A three-fifths majority (60) vote of the Senate is required to invoke cloture. This vote was the second attempt to invoke cloture on the Coverdell/Dole substitute amendment see vote No. 153). This vote succeeded after an understanding was reached that a pending Gorton/Rockefeller substitute amendment to the Coverdell/Dole substitute amendment would be agreed to. That second-degree substitute made the following changes to the Coverdell/Dole substitute amendment:

- an alternative dispute resolution (ADR) provision was added that would permit either a plaintiff or a defendant in a product liability action to suggest within 60 days of an initial complaint that ADR procedures in a State be used to resolve the complaint, and the opposing party would have to accept or reject the offer within 10 days;
- an exception to the limit on punitive damages was made that would allow a court to award any additional punitive damages it thought were warranted, though if additional damages were awarded the defendant could demand a new trial on punitive damages only;
- the formula for determining the punitive damage limit was changed to the greater of 2 times the sum of compensatory damages or $250,000; and
- the special limit on punitive damages for individuals with a net worth under $500,000 and businesses, organizations, and governments with less than 25 employees was modified to apply only to product liability cases instead of all civil cases. Additionally, the amendment's sponsors announced that unanimous consent to remove the provision that would allow a defendant to demand a jury trial if a judge increased a punitive damage award was unobtainable. However, they assured their colleagues they would work to remove that provision in conference.

Those favoring the motion to invoke cloture contended:

A majority of Senators favor broad-based legal reform; a majority of Senators favor medical malpractice reform; a majority of Senators favor binding limits on punitive damage awards; a majority of Senators favor disclosure of on attorney fees. Amendments on all of these subjects were voted on and were agreed to. Americans, therefore, may be surprised to hear that the bill that the Senate is about to vote on has had all of those amendments stripped out. The reason is that a minority of Senators refused to close debate on this bill until they were. These Senators, of course, were within their rights under the Senate rules, and we do not begrudge them their full use of those rules. If Senators wish to argue against reforms that every survey ever conducted has shown that the American people overwhelmingly support, that is their prerogative. If they wish to defend a tort system that pays trial lawyers obscene sums, inadequately compensates severely injured plaintiffs, has wildly uneven results in damage awards, and makes injured parties wait an average of two to three years before they receive compensation, they are certainly well within their rights. They should not be allowed to escape the consequences of mounting this defense, though. Every business, consumer, government, charity, doctor, and injured party in America should know that needed reforms to the tort system that is harming them were blocked by a minority of Senators who were intent on defending trial lawyers' profiteering.

Senators who are totally opposed to any reforms will not succeed in stopping this bill, however, because by agreeing to strip this bill back to its bare, original product liability elements, we have secured the commitment of enough Senators who oppose broad legal reforms but who support product liability reforms that we are confident that we will now close debate. The supposed new "compromise" proposal that has been put forward by this bill's opponents in an attempt to win back the votes of Senators who favor narrow reform will not work. A compromise has been reached, and we are confident that Senators will honor their pledge to support it. This vote to invoke cloture will carry.

Those opposing the motion to invoke cloture contended:

Our colleagues have worked in good faith to fashion a fair compromise with us. The Gorton/Rockefeller amendment, which has been proposed as a result of those negotiations, is close to an acceptable product. However, we still cannot vote to close debate. Instead, we urge our colleagues to vote against cloture, and to then vote in favor of a Breaux amendment which will be offered. The Breaux amendment would make several improvements on the Gorton/Rockefeller proposal. First, it would eliminate all the proposed punitive damage limits, including the lower punitive damage limit for small businesses, and would instead provide that judges alone would be permitted to assess punitive damages. Our colleagues' concern all along has been that juries occasionally award excessive amounts because they do not have a legal understanding of the appropriate amount to award; judges, though, have that understanding. The second change the Breaux amendment would make would be to establish a uniform statute of repose of 25 years that States could not shorten. The Gorton/Rockefeller amendment's similar statute of repose, in contrast, would not achieve any uniformity because it would allow States to enact even shorter time periods. The third improvement that would be made by the Breaux amendment would be to eliminate joint liability only for those defendants who were less than 15 percent responsible for an injury. If our goal is to make sure that a defendant who is only minimally responsible for an injury does not have to pay for all of the damages, then the appropriate course of action is to establish a de minimus standard, not to eliminate the doctrine of joint liability entirely. The Breaux amendment is a substantially better compromise proposal than is the Gorton/Rockefeller amendment. If the Senate votes to invoke cloture now,

though, we will never have an opportunity to consider it. We therefore urge our colleagues to vote against the motion to close debate.